IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

M/s. Public Works Construction Company

Versus

U.O.I. & Anr.

S.B. CIVIL REVISION PETITION NO.133/05

DATE OF ORDER : 09/10/2006

Hon'ble Shri Justice Ajay Rastogi

Shri Parag Rastogi, for petitioner
Shri Suresh Pareek, for respondents

BY THE COURT:

Instant revision petition has been filed by the plaintiff-petitioner against the order dated 28th July, 2005 whereby his application for restoration of order has been dismissed in default.

The petitioner filed application u/s.20 of Arbitration Act, 1940 on 27th October, 1993 before the learned District Judge, Kota for appointment of Arbitrator as per the agreement dated 2nd January, 1984. The respondents submitted their reply on 20th January, 1998 and on 16th April, 1998 issues were framed and 9th July, 1998 was fixed and it was further adjourned for 21st August, 1998. Because of illness of the Advocate, application was dismissed in default on 21st August, 1998. The application for restoration along with application u/s.5 of Limitation Act was filed on 15th October, 1999.

It has been stated by the counsel for petitioner that the lawyer appearing in the matter informed that whenever his presence is required, he will be informed

accordingly. When the restoration application came before the Court, the lawyer could not appear and the application for restoration was dismissed in default. Immediately without any loss of time, application for recalling the said order was filed along with the affidavit by the petitioner in support thereof.

Learned trial Judge after taking note of explanation furnished in the application dated 15th September, 2003, rejected the same under the order impugned.

Counsel for petitioner submits that petitioner was throughout pursuing the matter and only on the assurance extended by his counsel that as and when his presence will be required, proper intimation will be sent to him. Petitioner is residing at Bharatpur and because of assurance extended by his counsel, he was under bonafide belief that his presence is not required on passing of order on 06.09.2003. Immediately application was filed on 15th September, 2003 for recalling the same. Application was duly supported by affidavit filed by the petitioner and the learned Judge without examining the explanation furnished, dismissed the same which has caused great injustice to the petitioner and the material which is available on record and the explanation furnished duly supported by affidavit, was not taken note of, which has caused serious material irregularity in passing order impugned.

Counsel for respondents has vehemently contended that the petitioner was throughout negligent and has never taken care of the matter. Earlier, application was dismissed on 21st August, 1998. The affidavit was filed by the lawyer himself, but no documents were placed on record that he was ill and the said application was again dismissed on 6th September, 2003 and the affidavit furnished by the petitioner does not disclose the reasonable justification and in such circumstances, the

learned trial Judge has not committed any error in rejecting his application under the order impugned.

I have considered the submissions of the both the counsel and perused the material on record.

The petitioner has questioned the order dated 6th September, 2003 whereby his application was dismissed and the restoration application filed on 15th September, 2003 was rejected by the learned trial Judge under the order impugned. The application filed by the petitioner with reasonable justification and explanation has also been furnished for which lawyer could not put in appearance on 6th September, 2003. The application for its restoration was also filed within the period of limitation.

In my opinion, the explanation furnished by the petitioner as referred to in the application was sufficient for taking note of and ordinarily the additional evidence in support thereof is not required. I have gone through the application furnished by the petitioner and find that reasonable explanation has been furnished by the petitioner. Accordingly, the order dated 28th July, 2005 stands set aside and the order passed on 6th September, 2003 stands recalled and the learned trial Judge may now examine the application of the petitioner dated 15th October, 1999 which has been filed for recalling the order dated 21st August, 1998 in accordance with law.

With the above observations, the revision petition stands disposed of.

[Ajay Rastogi],J.

FRBOHRA,JR.P.A.